

INVENTOR: George McBride, et al  
Serial No.: 09/535,888

attorney docket: *cardiobeat-3*

### REMARKS

Claims 1-12 are in the application as filed.

Claims 1-12 stand rejected.

The Examiner is thanked for the courtesy of the Telephonic interview that was held on or about October 30. Also, the undersigned thanks Examiner Sahad Alam and Examiner Shabana Qureshi for the courtesies extended in the various telephonic interviews that occurred beginning on or about October 19, 2003 in an effort to determine the most appropriate manner in which to proceed in prosecution of this application.

The finality of the prior office action was not appropriate and it is requested that the finality be withdrawn, or in the alternative that this application be allowed with the amendments presented herein.

By this amendment claim 1 is amended to include further elements that are disclosed in the specification at pages 12 and 13. No new matter has been added.

Claim 9 has been amended to correct a typographical error.

In an interview with the Examiner Hosain Alam, it was determined that the final office action was maintained because the Examiner determined that the claims as amended in the last response were such as to remove the application from the technology expertise in the Examining Group. The Examiner acknowledged that he did not consider the specific medical application of the technology to be of significance because of his lack of expertise in the medical technology arts. Applicant was given the option of filing a RCE and having the application transferred to an appropriate technology group, amend the claims to include the additional novel aspects present at pages 12 and 13 of the specification. Applicant is aware that it also has the options of abandonment or appeal.

The present amendment to the claims is not intended to in any way limit Applicant's right to re-present those claims and the invention represented by those claims in a continuation application that can be directed to a more appropriate technology group. The present amendment is not intended to be the basis for any estoppel of Applicant from further prosecuting the claims as previously presented nor is it intended as any acquiescence in the Examiner's basis for rejection.

The present amendment is intended to bring to resolution prosecution on the application that was filed in early 2000 by adopting suggestions made by the Examiner that inclusion of material from pages 12 and 13 would bring the technology back into the scope of the technological expertise of the present Examining Group. The claims as presented in the prior amendment will made part of a separate continuation application based upon a copending application having a common disclosure.

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Still further, the present amendment is not a concession or admission in whole or in part that the claims as previously presented were in any way shown, taught or made obvious by the references applied. The disclosure provided in the present application describes multiple inventions, the claims presented previously define one invention, and the claims that are presented herein represent another invention that is more closely related to the technological expertise of the present Examining Group.

Claim 1 recites, inter alia, "downloading via the Internet a medical testing program from a server, said medical testing program being utilized to provide **non-invasive cardiovascular function related test measurement data;**" and "coupling at least one non-invasive sensor to said Internet device, said at least one sensor being non-invasively coupled to and **disposed on a patient to obtain impedance test measurement data;**..."

Finkelstein is not directed to cardiovascular function. Finkelstein is absolutely silent on the use of impedance test measurement data and the disposing of non-invasive sensors on a patient to obtain such measurement data. For this reason, it is maintained that claim 1 as previously presented is allowable over the art of record.

Claim 1, further recites, inter alia, "receiving processed **cardiac function test data** from said server as a download from said server via the Internet; and **displaying said processed cardiac function test data...**"

Finklestein is not directed to obtaining or displaying cardiac function test data.

In addition, claim 1 has been amended to recite, inter alia: "automatically uploading said test measurement data to said server via the Internet; automatically analyzing said test measurement data at said server to provide cardiac function test data; storing said test measurement data and said cardiac function test data for said patient in a database accessible by said server; operating on said test measurement data to produce substantially real time waveforms of said cardiac function test data; maintaining a history of test measurement data and cardiac function test data for said patient; utilizing a trending algorithm on said history to develop a medical condition trend for said patient." Finklestein does not show, teach or suggest automatic uploading, automatic analyzing, maintaining a history and utilizing a trending algorithm.

In view of the foregoing amendment and remarks, it is believed that claim 1 is not shown, taught or made obvious by the Finklestein reference. Furthermore, claims 2-12 depend from claim 1 and are likewise not shown, taught or made obvious by Finklestein.

In view of the amendments and the comments made herein, it is believed that the claims are not shown, taught or made obvious by the references taken singly or in combination. It is respectfully submitted that the claims are allowable over the references. It is further submitted that the application is in condition for allowance

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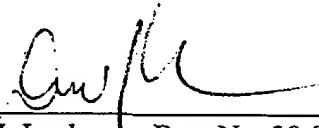
attorney docket: *cardioheat-3*

Re-examination and reconsideration are requested. It is further requested that the claims be allowed and that this application be passed to issue. An early notice of allowance would be appreciated.

Should the Examiner believe that a telephone conference would be helpful to resolving any issues, the Examiner is invited to call the undersigned at (602) 463-2010. Still further, should the Examiner not allow the claims as presently in this application, applicant reserves the right to withdraw the present amendment and file an appeal based upon the improper final rejection.

Respectfully submitted,  
DONALD J. LENKSZUS, P.C.

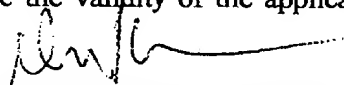
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